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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PAUL BUKOWSKI,

Appellant,

v.

JULIA GRAU GOMEZ,

Respondent.

B286862

(Los Angeles County
Super. Ct. No. 17STR03111)

APPEAL from orders of the Superior Court of Los Angeles County, Laura Hymowitz, Judge. Affirmed.

Lieber & Galperin and Yury Galperin for Appellant.

George R. Milman for Respondent.

Julia Andrea Grau Gomez obtained a civil harassment restraining order (Code Civ. Proc., § 527.6) against her neighbor, Paul Bukowski. Bukowski appeals, contending the evidence was insufficient to establish harassment. Concluding that substantial evidence supports the court's implied findings, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Harassment*

Bukowski lives in a home, with two rental units, located directly across the street from some bungalow apartments. In 2014, Gomez and her extended family moved into two of the bungalow apartments.

Based on little more than vague inferences, Bukowski came to believe that Gomez and her family were involved in some sort of illicit activity. For example, Bukowski, who at no point represented himself to be an expert on the matter, inferred that much of the "visitor activity" taking place at the Gomez bungalows "resembles trafficking activity."

Bukowski then engaged in a campaign of harassment directed at Gomez and her family. It included: photographing the license plates of all of her visitors' cars, in order to frighten the visitors into leaving and not returning; writing multiple letters to the Gomezes' landlord, demanding they be evicted; following Gomez when she left in her car; and regularly taking pictures and video of Gomez and her family. At one point, when Gomez and her daughter were passengers in a car driven by her brother, Juan, Bukowski used a garden hose to spray the occupants of the car, drenching them, causing damage to the car's interior, and frightening the child.

2. *Gomez's Petition*

On September 25, 2017, Gomez filed a request for a civil harassment restraining order against Bukowski. She sought to protect herself, her husband (whom Bukowski once pushed), and her daughter. This was only one of several cases between the neighbors. After the car-spraying incident, when the police declined to arrest Bukowski, Juan had him taken in on a citizen's arrest. Bukowski brought a small claims action against Juan for false arrest. Juan brought a separate petition for a civil harassment restraining order against Bukowski, which is not at issue in this appeal. There was also, apparently, a third case involving Bukowski's fiancée and the Gomezes' landlord, which is also not at issue here.

In support of her petition, Gomez filed a declaration which outlined the course of harassment described above. A temporary restraining order issued and the matter was set for hearing.

3. *Bukowski's Opposition*

Self-represented, Bukowski filed an opposition setting forth his view of the facts. His so-called "Justification or Excuse" began with his assertion that Gomez was simply pursuing the restraining order as a litigation tactic to convince him to drop his small claims suit against Juan. He next seemed to think it was relevant that the Gomez family had been evicted from their previous apartment, and attached documents from the unlawful detainer action against them. Finally, he explained that all of the alleged harassing acts could be explained by his attempts to protect his driveway, himself, and his neighborhood. He photographed the license plates of Gomez's guests to prevent them from parking in his driveway, blocking access of his tenants. He used the hose to spray the Gomez car in self-defense

because Juan had revved the engine aggressively, and he feared Juan was going to drive at him and his fiancée. He obtained extra cameras to record Gomez so that he would have evidence of further threats and assaults, and admitted that he sometimes starts recording when Gomez comes within 50 feet. His fiancée recorded Juan and Gomez when Bukowski “saw [them] actively involved in suspicious activity”; and he watched Gomez drive around the neighborhood because he had seen Gomez and Juan “involved in suspicious activity out in the street” and chose to watch Gomez to prevent “illegal activity occurring.” He closed by stating that if Gomez and her brother “do not want cameras pointed at them, simply stop threatening the neighbors, stop driving at the neighbors, and start conducting any illegal activity somewhere else.”¹

4. *The Hearing and Order*

At the hearing, Gomez testified that Bukowski follows her and takes pictures of her. She believed that he might be mentally ill. Bukowski testified that he had no idea why Gomez might say that; he believed that Gomez was angry because she had been caught on camera driving at him, although he offered no video to support his claim.

The trial court granted the restraining order. In explaining the ruling, the court expressed concern that Bukowski’s act of photographing the license plates of all of Gomez’s visitors and finding out who they are appeared to be somewhat paranoid. The

¹ Bukowski also denied that Gomez’s daughter was afraid of him, explaining that if she was suffering any emotional distress at all, it was “clearly” caused by “being forced to be made a part (as a ‘cover’) of any trafficking activity her mother might be involved in.”

court also noted that Bukowski was charged with battery in connection with this dispute, but Gomez and her brother were not.

5. *Bukowski's Motion for Reconsideration*

Bukowski, now represented by counsel, filed a timely motion for reconsideration, arguing that the trial court erred in that it relied on two purported facts which were simply untrue. Although Bukowski had photographed Gomez's guests' license plates, there was no evidence that he had attempted to run the plate numbers through any database. He also argued the court erred in relying on the fact that he had been criminally charged with battery; the police had taken him in on Juan's citizen's arrest, but no further charges were filed.

At the hearing on reconsideration, the court expressed some confusion, in that the court at times referred to the proceedings in the lawsuit involving Bukowski's fiancée and the Gomez landlord.² The court turned to the merits of Bukowski's motion for reconsideration, and explained that the issuance of the restraining order was not based only on the two findings challenged by the reconsideration motion. The court emphasized that it had listened to both sides and believed Gomez. The court added its belief that Bukowski was spending his days taking pictures and giving Gomez "a really hard time about the property and about parking and who was parking in their place," which

² On appeal, Bukowski argues that the trial court's "mistaken belief as to the facts of this matter" is highlighted by the court having believed Bukowski's fiancée was at the prior hearing in this case, although she was not. He fails to mention that Bukowski's fiancée was present in the other matter, and that, after counsel clarified this, the court recognized that it may have inadvertently been considering the two matters as one.

the court concluded was harassment. Bukowski's counsel argued that the evidence was that the only time Bukowski took photographs was when the vehicles were blocking his driveway. The court asked Gomez her response, and she said this was untrue. Bukowski ran to her guests' cars and took pictures; he followed Gomez; he took pictures of Gomez; he yelled at her daughter; and he yelled at her landlord telling the landlord to kick them out. The court declined to change its order on reconsideration.

DISCUSSION

1. *Standard of Review*

"The elements of unlawful harassment, as defined by the language in [Code of Civil Procedure] section 527.6, are as follows: (1) 'a knowing and willful course of conduct' entailing a 'pattern' of 'a series of acts over a period of time, however short, evidencing a continuity of purpose'; (2) 'directed at a specific person'; (3) 'which seriously alarms, annoys, or harasses the person'; (4) 'which serves no legitimate purpose'; (5) which 'would cause a reasonable person to suffer substantial emotional distress' and 'actually cause[s] substantial emotional distress to the plaintiff'; and (6) which is not a '[c]onstitutionally protected activity.'" (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.)

Although a civil harassment restraining order must be based on clear and convincing evidence of harassment (Code Civ. Proc., § 527.6, subd. (i)), on appeal, the "clear and convincing" test disappears and we review for substantial evidence. (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1227, fn. 11). "The appropriate test on appeal is whether the findings (express and implied) that support the trial court's entry of the restraining order are justified by substantial evidence in the record.

[Citation.]” (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188 [affirming civil harassment restraining order].) “We resolve all conflicts in the evidence in favor of respondent, the prevailing party, and indulge all legitimate and reasonable inferences in favor of upholding the trial court’s findings. [Citation.] Declarations favoring the prevailing party’s contentions are deemed to establish the facts stated in the declarations, as well as all facts which may reasonably be inferred from the declarations; if there is a substantial conflict in the facts included in the competing declarations, the trial court’s determination of the controverted facts will not be disturbed on appeal. [Citation.]” (*Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137-1138.)³

2. *Sufficient Evidence Supported the Finding of Harassment*

Bukowski’s first argument on appeal is an attempt to reargue his motion for reconsideration. Specifically, he argues there was insufficient evidence of harassment because there was no evidence that he attempted to look up the owners of the cars from their license plate numbers and no evidence that he was charged with battery – two facts on which the court’s order was allegedly based. But, at the hearing on reconsideration, the court explained that the finding of harassment was based on much more than those two, apparently mistaken, facts. Gomez’s declaration, submitted in connection with her petition, explained that: Bukowski regularly takes pictures of her and her family;

³ A civil harassment restraining order is appealable. (Code Civ. Proc., § 904.1, subd. (a)(6); *R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 187.) A motion for reconsideration is not appealable, but is reviewable as part of the appeal of the underlying order. (Code Civ. Proc., § 1008, subd. (g).)

takes pictures of anyone who comes in and out of her house; has followed her by car when she was driving; and sprayed Juan's car's occupants (including Gomez) with water when the car was in the street. This is sufficient evidence of harassment.

Bukowski also argues that the finding of harassment was based on false testimony, in that, in connection with the water-spraying incident, Gomez had testified that Juan had not driven in Bukowski's driveway, but Bukowski had photographic evidence that Juan had used the Bukowski driveway for a three-point turn, before driving back into the street where Bukowski sprayed it. This distinction is simply irrelevant. Regardless of whether Juan had turned the car in the Bukowski driveway or in the street in front of it, Bukowski indisputably turned the hose on the car's occupants when the car was not on his property. Bukowski took the position that he did so because Juan had revved the engine in a threatening manner, and that Bukowski believed Juan might drive at him and his fiancée. Gomez testified that all Juan had done was turn the car around. The court believed Gomez.

3. *Conduct was Directed at Gomez*

Bukowski next argues that there is insufficient evidence of harassment because the statute requires the harassing conduct be specifically directed at the victim, but his conduct of taking photographs of the license plates was directed at Gomez's guests, not Gomez herself.

Bukowski is again basing his argument on the premise that the restraining order was issued *only* for the two reasons the court mentioned at the first hearing. But we do not presume the court's justifications for its order were so limited; indeed, the trial

court explained as much when it declined to change its order on reconsideration.

Specifically, Bukowski photographed Gomez and followed Gomez – conduct clearly specifically directed at Gomez. He also hosed the car in which she and her daughter were riding, causing damage and fear. Moreover, under the circumstances, we conclude the evidence supports the conclusion that photographing her guests' license plates was also directed at Gomez. Bukowski believed that Gomez was involved in illicit trafficking activity; he photographed her visitors' license plates in order to encourage them to leave and never come back. This was directed at Gomez.

4. *Conduct Lacked a Legitimate Purpose*

Finally, Bukowski argues that his act of photographing the license plates had a legitimate purpose, so could not be considered harassment. Specifically, he argues that it was intended to prevent Gomez's guests from parking in his driveway. While this was the purpose testified to by Bukowski, the trial court was not required to believe him, and the evidence – including Bukowski's opposition to the restraining order – painted a different picture.

Bukowski believed – with no supporting evidence presented to the trial court – that the Gomez family was engaged in criminal activity, and he did not want it happening on his street. Not only did he understandably not want Gomez's guests blocking his driveway, he did not want them there at all, and took pictures of their cars in the hopes of making them uncomfortable enough to leave and never return. When he thought Gomez was “involved in suspicious activity,” he followed her or took pictures. Believing that Gomez and her brother were constantly on the verge of committing crimes, he armed himself

with a camera and started recording when she was within 50 feet. The court noted that this seemed paranoid.

Bukowski's briefing on appeal is suspiciously devoid of any references to perceived illicit or suspicious activity – even though this had formed the bulk of his originally-filed opposition to the restraining order. Bukowski is attempting on appeal to recharacterize his conduct as a rational reaction to a garden-variety parking dispute, when, in truth, he believed that his neighbors were engaged in criminal activity, and he sought to do whatever he could to stop it from happening on his street – up to and including harassment.

DISPOSITION

The order is affirmed. Bukowski is to pay Gomez's costs on appeal. We express no opinion on whether Gomez is entitled to attorney's fees.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.